

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

FANSTEEL METALS, INC.)	
F/K/A FMRI, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:22-cv-00366-JFH-GLJ
)	
CITIGROUP, INC.; and)	
UNION CARBIDE CORPORATION,)	
)	
Defendants.)	
_____)	

FIFTH JOINT STATUS REPORT

The parties hereto (“Parties”), comprising the Plaintiff, Fansteel Metals, Inc. f/k/a FMRI, Inc. (“Plaintiff” or “Fansteel”), by and through its undersigned counsel, and Defendants Citigroup, Inc. (“Citigroup”) and Union Carbide Corporation (“UCC”), by and through their respective undersigned counsel, subject to each Defendants’ reservation of all defenses and procedural rights including all those under Fed. R. Civ. P 12 (b), except as to service, and subject to all other defenses they may later assert in a responsive motion or answer to Plaintiff’s Complaint, without waiver, respectfully submit this updated Fifth Joint Status Report:

1. This is a civil action pursuant to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), relating to the release and/or threatened release of hazardous substances from the former Fansteel, Inc. facility located at 10 Tantalum Place, Muskogee County, Muskogee, Oklahoma, as well as any area where hazardous substances that migrated from the Fansteel site have come to be located (collectively, the “Fansteel Site”).

2. This case was filed on December 14, 2022 (Dkt. #2). As indicated in the Civil Cover

Sheet (Dkt. #1), this case is related to the pending case styled *Fansteel Metals, Inc. v. Muskogee City-County Port Authority, et al.*, Case No. 21-cv-102-RAW (“Underlying Case”). This separate related case was filed by Plaintiff’s undersigned counsel because Plaintiff’s lead counsel in the Underlying Case has conflicts with Citigroup and UCC.

3. Both Citigroup and UCC have waived service and Plaintiff has filed their executed Waivers of Service in this case (Dkt. # 8, 11), but have reserved all of their respective rights to assert all defenses and procedural rights including all those under Fed. R. Civ. P 12 (b), except for service as noted above, and subject to all other defenses they may later assert, without waiver.

4. By virtue of the Fourth Joint Status Report filed by the Parties on November 20, 2023 (Dkt. #42) and unopposed motions for extensions of time filed by Citigroup and UCC to answer or otherwise respond to Plaintiff’s Complaint until April 1, 2024 (Dkt. #44, 46), the Court extended the time for both Citigroup and UCC to answer or file responsive pleadings to Plaintiff’s Complaint to April 1, 2024, and further ordered the Parties to submit their Fifth Joint Status Report by March 20, 2024 (Dkt. #43, 45, 47).

5. Plaintiff maintains that its Section 113(f) claims arose on June 2, 2020, when the Bankruptcy Court for Fansteel Inc.’s 2016 bankruptcy entered the Environmental Settlement Agreement (“ESA”) that resolved claims against Fansteel and Plaintiff by the United States, on behalf of the Nuclear Regulatory Commission (“NRC”) and Environmental Protection Agency (“EPA”), and the Oklahoma Department of Environmental Quality (“ODEQ”).

6. Pursuant to the ESA, Plaintiff was to complete its investigation and remediation of the Fansteel Site as required by the NRC, EPA and ODEQ and to pursue all potentially responsible parties (“PRPs”) under CERCLA for their share of Fansteel’s and Plaintiff’s eligible response costs incurred and to be incurred to investigate and remediate the Fansteel Site. As relevant here,

Section 113(f)(3)(B) provides:

A person that has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in [Section 113(f)(2)].

7. Plaintiff's pursuit of contribution from PRPs based on its settlement is subject to a three-year statute of limitations from the date of "entry of a judicially approved settlement with respect to such costs." 42 U.S.C. § 9613(f)(2). Plaintiff maintains such period thus expired June 2, 2023. *See id.*

8. As noted in prior Status Reports filed in the Underlying Case, Plaintiff previously furnished to the EPA documents that comprise its Vendor Documents that it compiled in order to respond to the EPA's Request for Information pursuant to 42 U.S. Code § 9604(e) (the "EPA RFI").

9. In addition to the EPA RFI-responsive Vendor Documents, the following additional records have been provided by Plaintiff to the EPA:

- a. Additional secondary and further supportive Vendor Documents not included in Plaintiff's EPA RFI response;
- b. Copies of Plaintiff's Chart of preliminary volumetric calculations for the Vendor Defendants' residual waste materials ("RWM") at the Fansteel Site, including its initial February 1, 2022 Chart, as well as its April 25, 2022 Updated Chart, its March 14, 2023 Second Updated Chart, and its further revised March 28, 2023 Second Updated Chart, which were updated and revised as described in greater detail below;
- c. Copy of preliminary volumetric RWM calculations spreadsheet for Citigroup (reflecting RWM based upon Philipp Brothers, Inc.'s purchase arrangements

with Fansteel¹), performed by Plaintiff's counsel in the Companion Action²; and

- d. A summary version of Plaintiff's updated Confidential Memorandum, to inform the EPA and DOJ about the private-party settlement structure options Plaintiff will be presenting to Citigroup and UCC once the RWM calculations are completed and reviewed and approved by EPA and its contractor.

10. Counsel for Plaintiff in this case has informally provided all nexus documents used to perform RWM calculations for Citigroup and UCC to counsel for Citigroup and UCC in this case.

11. Plaintiff's counsel in this case has also informally provided to counsel for Citigroup and UCC all nexus documents for Vendor Defendants in the underlying case, as well as various technical administrative records for the Fansteel Site.

12. Since the Parties' Fourth Joint Status Report filed on November 20, 2023, there continue to be significant developments with respect to the Fansteel Site.

13. EPA and DOJ Enforcement are still in the process of determining which Vendor Defendants will be classified as *de minimis* and non-*de minimis* for purposes of *de minimis* settlement offers issued by EPA to *de minimis* Vendor Defendants and potential general and/or special notice letters from EPA to non-*de minimis* Vendor Defendants.

14. Plaintiff's understanding from its recent discussions with EPA/DOJ (Citigroup and

¹ In its Complaint, Plaintiff alleges that Citigroup is the successor to the environmental liabilities of Philipp Brothers, Inc. at the Fansteel Site.

² Preliminary volumetric calculations for UCC's RWM at the Fansteel Site are currently being performed by EPA's contractor Toeroek Associates, Inc. EPA has indicated it may provide such calculations to Plaintiff and UCC upon completion.

UCC were not participants in these discussions) is that EPA/DOJ will be seeking to resolve each non-*de minimis* Vendor Defendant's equitable share of EPA's past eligible costs incurred as well as each non-*de minimis* Vendor Defendant's equitable share of future eligible costs for future remedial actions at the Fansteel Site. Plaintiff understands that after EPA issues its *de minimis* settlement offers to eligible *de minimis* Vendor Defendants (currently estimated to be sometime March or April 2024), EPA/DOJ will be issuing future General Notice Letters, which will be followed by Special Notice Letters, to obtain the remaining non-*de minimis* Vendor Defendants' participation in the Fansteel Site long-term cleanup objectives.

15. Under Section 113(b) of CERCLA, any Vendor Defendants determined by EPA to be potentially responsible parties under CERCLA and that settle their alleged CERCLA liability with EPA for EPA's eligible past and future costs at the Fansteel Site will receive contribution protection from any other claims for future response costs. Plaintiff contends such contribution protection will not apply to Plaintiff's alleged past incurred response costs, which Plaintiff contends are approximately \$60 million. Fansteel Metals will be seeking to resolve Citigroup and UCC's alleged respective equitable shares of Plaintiff's alleged eligible past incurred response costs in exchange for a dismissal with prejudice from this cause.

16. Plaintiff has already provided the settlement agreement form Plaintiff proposes to use for settling Plaintiff's alleged eligible past incurred response costs claims with all Vendor Defendants to counsel for Citigroup and UCC. Plaintiff will soon be providing to counsel for Citigroup and UCC an itemization of Plaintiff's approximate \$60 million in allegedly eligible past incurred response costs, along with access to all backup documents for such past costs.

17. As soon as EPA issues its *de minimis* settlement offers, the parties will know the RWM calculations for Citigroup, UCC, along with all other Vendor Defendants, which will allow

the parties to determine Citigroup and UCC's alleged respective percentages of the total RWM calculation for all Vendor Defendants, and which will allow Plaintiff to issue specific settlement offer amounts to Citigroup and UCC for their respective alleged equitable shares of Plaintiff's alleged past incurred response costs.

18. Due to the timing discussed above and the uncertainty regarding the timing for EPA to issue its *de minimis* settlement offers, which will allow Plaintiff to issue its settlement offers for alleged past response costs to Citigroup and UCC, Citigroup and UCC plan to file additional unopposed motions seeking further extensions of time to and including **July 1, 2024** for Citigroup and UCC to answer or file responsive pleadings to Plaintiff's Complaint in this case.

19. The requested extensions of time to and including **July 1, 2024** for Citigroup and UCC to answer or file responsive pleadings to Plaintiff's Complaint may continue to streamline and facilitate Plaintiff's Fed. R. Evid. 408 settlement discussions with Citigroup and UCC. The Parties believe such an extension of time saves judicial resources from having to monitor the status of each Defendant's compliance with its respective Fed. R. Civ. P. 6 or 12 deadlines and from having to address a cluttered docket that would certainly result if each of them was required to seek individualized and varied extensions of time during the pendency of their upcoming and ongoing settlement discussions with Plaintiff.

20. The Parties intend to update the Court regarding the status of this case and all settlement discussions prior to the expiration of the additional leave to grant further extensions being sought by Plaintiff, on or before **June 20, 2024**.

Dated: March 20, 2024

Respectfully submitted,

THE JUSTIS LAW FIRM LLC

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, a copy of the foregoing Fifth Joint Status Report was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access the filing through the Court's Electronic Case Filing System.

/s/ Gary D. Justis

Gary D. Justis